

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LARITA FERGUSON, as Parent and Natural
Guardian of J[REDACTED] C[REDACTED] an Infant Under
the Age of Fourteen Years,

10 CV 0074 (ILG) (RER)

Plaintiffs,

-against-

AMENDED COMPLAINT
AND JURY TRIAL DEMAND

P.O. GORDON MAK, Tax No. 931805, P.O.
PATRICK WERBER, Shield No. 6871, and
LIEUTENANT MATTHEW PAULES, and
THE CITY OF NEW YORK,

Defendants.
-----X

Plaintiffs, LARITA FERGUSON as Parent and Natural Guardian of [REDACTED]

[REDACTED], an Infant Under the Age of Fourteen Years, by their attorney, ALAN D.

LEVINE, ESQ., complaining of the defendants herein, respectfully allege as follows:

JURISDICTION

1. This is a civil action, seeking compensatory damages, punitive damages and attorney's fees.
2. This action is brought pursuant to 42 U.S.C. §§1983 and 1988 and the fourth and fourteenth amendments to the Constitution of the United States.
3. Jurisdiction is founded upon 28 U.S.C. §§1331, 1343 and 1367.
4. Plaintiffs, invoking the pendent jurisdiction of this Court, also seek monetary damages, both compensatory and punitive, as well as attorney's fees, for false arrest.

VENUE

5. Venue is properly alleged in the Eastern District of New York in that the acts complained of herein occurred within this District.

JURY TRIAL DEMAND

6. Plaintiffs hereby demand a trial by jury of all issues in this action that are so triable.

PARTIES

7. At all times relevant hereto, plaintiff LARITA FERGUSON was and is a natural person, resident in the County of Queens, City and State of New York.

8. At all times relevant hereto, infant plaintiff [REDACTED] was and is a natural person under the age of fourteen years, resident in the County of Queens, City and State of New York.

9. Plaintiff LARITA FERGUSON is the parent and natural guardian of the infant plaintiff [REDACTED].

10. At all times relevant hereto, defendant P.O. GORDON MAK, Tax No. 931805 (hereinafter "MAK") was and is a natural person, employed as a police officer by the Police Department of defendant CITY OF NEW YORK.

11. At all times relevant hereto, defendant P.O. PATRICK WERBER, Shield No. 6871 (hereinafter "WERBER") was and is a natural person, employed as a police officer by the Police Department of defendant CITY OF NEW YORK.

12. At all times relevant hereto, defendant LIEUTENANT MATTHEW PAULES (hereinafter "PAULES") was and is a natural person, employed as a lieutenant by the Police Department of defendant CITY OF NEW YORK.

13. At all times relevant hereto, defendant CITY OF NEW YORK was and is a municipal corporation, organized and existing pursuant to the laws of the State of New York.

14. On or about October 31, 2008, this date being within ninety (90) days after the claims herein sued upon accrued, plaintiffs served upon the Comptroller of the City of New York a verified written notice of claim setting forth the time, place, nature and manner in which said claim arose.

15. More than thirty (30) days have elapsed since the aforesaid verified notice of claim was served and the Comptroller has neglected and refused to make payment of said claim.

16. This action is commenced within one year and ninety days from the date the cause of action herein accrued.

**AS AND FOR A FIRST CAUSE OF ACTION
AGAINST THE INDIVIDUAL DEFENDANTS**
(42 U.S.C. 1983)

17. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs "1" through "16" hereinabove as if more fully set forth at length herein.

18. On or about October 20, 2008, at approximately 4:50 P.M., the infant plaintiff, who was eleven years old, was returning to the home where he lives with his grandparents and his mother, carrying a dozen eggs he had just purchased, at his grandmother's request, at a neighborhood grocery store.

19. At the aforementioned time and place, the infant plaintiff stood four feet, eleven inches tall and weighed eighty-three pounds.

20. As the infant plaintiff was walking along 211th Street, near Hollis Avenue, in the County of Queens, City and State of New York, an unmarked New York City Police Department motor vehicle pulled up next to him.

21. A plainclothes police officer, upon information and belief defendant PAULES, exited the vehicle and ordered the infant plaintiff to come over to him.

22. The infant plaintiff complied with the instruction and, upon doing so, was grabbed by defendant PAULES who demanded, "Where's the fucking phone?".

23. The infant plaintiff replied that he did not have any phone.

24. Defendant PAULES accused the infant plaintiff of lying, rear-handcuffed him and placed him in the back seat of the aforementioned motor vehicle.

25. Defendant PAULES then radioed for another vehicle to come to the scene.

26. The infant plaintiff's grandmother, alerted to the incident by two children from the neighborhood, arrived at the scene.

27. The infant plaintiff's grandmother asked defendant PAULES why her grandson was being arrested.

28. Defendant PAULES replied that her grandson had committed a robbery, namely that he had assaulted a woman and had stolen her cell phone.

29. A marked New York City Police Department motor vehicle arrived at the scene.

30. Upon information and belief, defendants MAK and WERBER were the driver and recorder, respectively, of the marked motor vehicle.

31. The infant plaintiff was removed from the aforementioned unmarked motor vehicle and was put into the marked vehicle.

32. The infant plaintiff was transported to the stationhouse of the 105th Precinct by defendants MAK and WERBER.

33. The infant plaintiff's mother and grandparents arrived at the stationhouse at the same time as the infant plaintiff.

34. The infant plaintiff was taken into the stationhouse by defendants MAK and WERBER through a back door, was brought to the front desk, where he was pedigreed, and was then taken to a bench where he was sat down and where one of his arms was handcuffed to a metal bar on the wall.

35. Defendant MAK was designated as the arresting officer.

36. Upon information and belief, defendant MAK charged the infant plaintiff with disorderly conduct.

37. The infant plaintiff's mother and grandparents were informed by a police officer, upon information and belief one of the defendants hereto, that the female who had complained of being robbed was not present at the stationhouse.

38. The infant plaintiff's grandfather was able to determine that the complaining witness had told the police that the robber was wearing a red shirt and black pants.

39. At all times relevant hereto, the infant plaintiff was wearing red pants and a brown jacket over a white shirt.

40. When the infant plaintiff's grandfather pointed out this discrepancy in the description of the robber to police officers, upon information and belief including the

individual defendants, he was now told that the infant plaintiff had been arrested because he had assaulted defendant PAULES.

41. After several minutes, however, one or more of the individual defendants informed the infant plaintiff's mother and her parents that the infant plaintiff was being released.

42. The infant plaintiff was released after having been held in custody for approximately one hour.

43. The individual defendants violated the infant plaintiff's right to be arrested only upon probable cause, guaranteed to him by the fourth amendment to the Constitution of the United States, and his right to due process of law, guaranteed to him by the fourteenth amendment to the Constitution of the United States, in that, acting under color of state law, they, without any cause or provocation whatsoever, falsely placed him under arrest and falsely imprisoned him.

44. Because of the aforementioned acts committed by the individual defendants, the infant plaintiff suffered a deprivation of the right to be arrested only with probable cause, guaranteed to him by the fourth amendment to the Constitution of the United States, and of the right to due process of law guaranteed to him by the fourteenth amendment to the Constitution of the United States, and, as a result, suffered and continues to suffer serious and permanent emotional injuries.

45. By reason of the unconstitutional and illegal actions taken against him by the individual defendants, the infant plaintiff has been damaged in the amount of One Million (\$1,000,000.00) dollars and demands an additional One Million (\$1,000,000.00) dollars as punitive damages against the individual defendants.

**AS AND FOR A SECOND CAUSE OF ACTION
AGAINST THE INDIVIDUAL DEFENDANTS AND
THE CITY OF NEW YORK
(False Arrest)**

46. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs "1" through "45" hereinabove as if more fully set forth at length herein.

47. On or about October 20, 2008, at approximately 4:50 P.M., on 211th Street, near the corner of Hollis Avenue, in the County of Queens, City and State of New York, the individual defendants, without probable cause therefor, forcibly, wrongfully and unlawfully arrested the infant plaintiff and, against the infant plaintiff's own free will, transported him to the stationhouse of the 105th Precinct and caused him to be incarcerated for one hour.

48. The individual defendants at first falsely, maliciously, wrongfully, unlawfully and illegally accused the infant plaintiff of having committed a robbery but then falsely, maliciously, wrongfully, unlawfully and illegally charged him with disorderly conduct.

49. The infant plaintiff was illegally, falsely, maliciously, wrongfully and unlawfully kept in confinement in two New York City Police Department motor vehicles and at the stationhouse of the 105th Precinct.

50. At the time they committed the aforesaid acts of false arrest and false imprisonment, the individual defendants were acting within the scope of their employment by defendant CITY OF NEW YORK.

51. By reason of the false arrest and false imprisonment committed against him by the individual defendants, while they were acting within the scope of their

employment by defendant CITY OF NEW YORK, the infant plaintiff suffered and continues to suffer serious and permanent emotional injuries.

52. As a result of the aforesaid acts of false arrest and false imprisonment, committed against him by the individual defendants, while they were acting within the scope of their employment by defendant CITY OF NEW YORK, the infant plaintiff has been damaged in the sum of One Million (\$1,000,000.00) dollars and demands an additional One Million (\$1,000,000.00) dollars as punitive damages against the individual defendants.

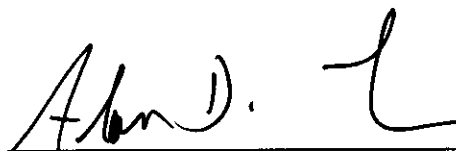
WHEREFORE, plaintiffs, LARITA FERGUSON, as Parent and Natural Guardian of JAVON COLEMAN, an Infant Under the Age of Fourteen Years, demand judgment against defendants, P.O. GORDON MAK, Tax No. 931805, P.O. PATRICK WERBER, Shield No. 6871, LIEUTENANT MATTHEW PAULES and THE CITY OF NEW YORK, as follows:

FIRST CAUSE OF ACTION: One Million (\$1,000,000.00) Dollars and an additional One Million (\$1,000,000.00) Dollars as punitive damages against the individual defendants;

SECOND CAUSE OF ACTION: One Million (\$1,000,000.00) Dollars and an additional One Million (\$1,000,000.00) Dollars as punitive damages against the individual defendants.

In addition, plaintiffs demand the costs and disbursements of this action, including their attorney's fees, pursuant to 42 U.S.C. §1988.

Dated: Kew Gardens, New York
June 24, 2010

A handwritten signature in black ink, appearing to read "Alan D. Levine", is written over a horizontal line.

ALAN D. LEVINE, ESQ.
Attorney for Plaintiffs
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File No: 2111